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MISCELLANY.

Safeguards Protecting Liberty of Citizen.—"Although the Commonwealth is active in the suppression of crime, and prompt and vigorous in its punishment, it is very jealous of the liberty of the citizen, and throws around him every safeguard of a fair and impartial trial. It gives him the 'right to demand the cause and nature of his accusation,' thereby assuring him of all needful information of the offense with which he is charged; it guarantees to him 'a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty,' thereby assuring him a prompt trial, an impartial tribunal and a just verdict; and it warns the jury that they are not to convict unless satisfied of the guilt of the accused beyond a reasonable doubt." Burks, J., in *Pine v. Commonwealth*, 121 Va. 812, 652, 93 S. E. 652.

Opinions of Court—Brevity Desirable.—In *Kellogg v. Chapman* (Tex. Civ. App.), 201 S. W. 1096, 1101, the court said: "There seems to be in our good state a desire on the part of the bench and bar that in the consideration of cases in the appellate court extensive opinions should not be handed down, but that briefness should by the appellate courts be considered, among other things, of prime importance in the consideration of the cases submitted."

In *State v. Williams*, 128 N. C. 573, 37 S. E. 952, the following is found: "The multiplication of law reports makes it desirable that the courts should refrain from filing opinions which state no new points or new application of settled principles."

Judicial Comment on Dicta.—"A dictum of the court of last resort should not be entirely disregarded." *Bird v. St. Paul Fire & Marine Ins. Co.*, 167 N. Y. Supp 707, 710.

"Looseness of language and dicta in judicial opinions, either silently acquiesced in or perpetuated by inadvertent repetition, often insidiously exert their influence until they result in confusing the application of the law, or themselves become crystallized into a kind of authority which the courts, without reference to true principle, are constrained to follow. These observations are particularly applicable to the doctrine of contributory negligence and especially in its relation to what is generally called the rule of *Davies v. Mann*. All along the highway of judicial decision we find it so strewn with the wrecks of overruled cases, exploded dicta and condemned or qualified expressions that we are inclined to sympathize with the despairing remarks of Judge Thompson that 'the whole subject of contributory negligence remains in a state of great confusion and un-

certainty.' 2 Vol. Neg., § 7." *Smith v. Norfolk, etc., R. Co.*, 114 N. C. 728, 749, 19 S. E. 863, 923.

Judge-Made Law—Rights and Needs of Drunken Man.—When lawyers are defeated in the Supreme Court by that tribunal taking cognizance of the maxim that "it is the letter of the law that killeth but the spirit that maketh alive," they sometimes elevate the tips of their proboscides and sneer at the decision against them as "judge-made law." It is not clear that judge-made law may not sometimes promote substantial justice more than statutes enacted by legislatures. There was a case decided by a justice of the Supreme Court of California at an early day in which the rights of a drunken man were clearly and sensibly defined. The plaintiff, while inebriated, had stepped upon a rotten plank in the sidewalk, which gave way under him, and as a result his leg was broken. He sued the city, and the answer of the municipality was that, as the plaintiff was intoxicated at the time of the accident, he was guilty of contributory negligence and therefore not entitled to recover. This plea proved unavailing with the court and jury, and he was accorded a judgment for damages. The city appealed, but the Supreme Court affirmed the judgment, saying: "A drunken man has as good a right to perfect sidewalk as a sober man, and he needs one a good deal more."—Case and Comment.

The Lawyer's Service.—The lawyer who discharges faithfully the ordinary duties of the day, who contributes his best efforts to the prompt and just settlement of all controversies wherein his interposition is invited, whose advice and opinion from day to day keeps the business and social machinery of the country constantly adjusted to new laws and to new conditions, is serving his country equally with those who build ships and fill the granaries of the country with wheat and corn. Especially is this true if such service is rendered with an eye ever alert and single to the highest interests of the nation in this its hour of greatest need.—*Alexander v. Robbins*, in *Central Law Journal*.

An Honest Lawyer.—"An honest lawyer is the life-guard of our fortunes; the best collateral security for an estate; a trusty pilot to steer us through the dangerous oceans of contention; a true priest of justice, that neither sacrifices to fraud nor covetousness; and in this outdoes those of a higher function, that he can make people honest that are sermon-proof. He is an infallible anatomist of meum and tuum, that will presently search a cause to the quick, and find out the lurking cheat, though masked in never so fair pretenses; one that practices law so as never to forget the Gospel, but always

wears a conscience as well as a gown, though he knows all the criticisms of his faculty and the nice snapperadoes of practice, yet he never uses them. He draws his knowledge from the original springs, digesting the whole body of the law in a laborious and regular method, but especially aims to be well versed in the practice of every court and rightly to understand the art of good pleading, as knowing them to be the most useful to unravel the knotty intrigues of the cause and reduce it to an issue; yet hates to pester the court with Circuities, Negative Pregnants, Departures, and multiplied Inconveniences. In a word, whilst he lives, he is the delight of the court, the ornament of the bar, the glory of his profession, the patron of innocency, the upholder of right, the scourge of oppression, the terror of deceit and the oracle of his country; and when death calls him to the Bar of Heaven, by a habeas corpus cum causa, he finds his Judge his Advocate, obtains a liberate from all his infirmities, and continues still one of the Long Robe in Glory."—Sir Roger L'Es-trange.

The Heart of Woman a Citadel of Virtue.—In *Woodward v. State*, 5 Ga. App. 447, 63 S. E. 573, Chief Justice Hill gave vent to the following encomium on woman: "Providence, wisely intending to save the human race from moral wreck and ruin, has made the heart of woman a citadel of virtue, invincible to the brutal forces of lust, and capitulating only to the gentle promptings of confiding love."

"A Sweetheart in Every Town" as Affecting Common-Law Marriage—In *Walton v. Walton* (Tex. Civ. App.), 203 S. W. 133, it was held that evidence that a railroad man had the reputation of having a sweetheart in every town, that he received many letters from other women, and being a man of that kind, may have been keeping other women at different places, and at intervals, during the time a woman claimed he was her common-law husband, does not militate against the force of unassailed facts establishing that relationship; this being necessarily so for the reason that both conditions, deplorable as they might be, could coexist during the same general period of time without destroying the legal effect of his having actually so lived and cohabited with her.